

U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:17-cv-00563-RDM

BERNEGGER v. EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS

Assigned to: Judge Randolph D. Moss

Case: 1:18-cv-00908-RDM

Cause: 05:552 Freedom of Information Act

Plaintiff

PETER M. BERNEGGER

Date Filed: 03/29/2017

Jury Demand: None

Nature of Suit: 895 Freedom of Information Act

Jurisdiction: Federal Question

represented by **PETER M. BERNEGGER**

1806 Brynnwood Trace

New London, WI 54961

(920) 982-4390

PRO SE

V.

Defendant

EXECUTIVE OFFICE FOR UNITED STATES ATTORNEY

represented by **Johnny Hillary Walker , III**

U.S. ATTORNEY'S OFFICE

Civil Division

555 Fourth Street, NW

Washington, DC 20530

(202) 252-2575

Fax: (202) 252-2599

Email: johnny.walker@usdoj.gov

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
03/29/2017	<u>1</u>	COMPLAINT against EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS filed by PETER M. BERNEGGER. (Attachments: # <u>1</u> Civil Cover Sheet)(zrdj) (Entered: 03/31/2017)
03/29/2017	<u>2</u>	MOTION FOR WAIVER OF FEES by PETER M. BERNEGGER (zrdj) (Entered: 03/31/2017)
03/29/2017	<u>3</u>	MOTION TO HAVE US MARSHAL SERVE SUMMONS AND COMPLAINT by PETER M. BERNEGGER (zrdj) (Entered: 03/31/2017)
03/29/2017	<u>4</u>	ORDER granting <u>2</u> Motion for WAIVER OF FEES ; granting <u>3</u> Motion TO HAVE US MARSHAL SERVE SUMMONS AND COMPLAINT. Signed by Judge Colleen Kollar-Kotelly on 3/27/2017. (zrdj) (Entered: 03/31/2017)
03/29/2017		Initiating Pleading & IFP Application Received on 3/10/2017. (zrdj) (Entered: 03/31/2017)
04/03/2017	<u>5</u>	SUMMONS (3) Issued as to EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS, U.S. Attorney and U.S. Attorney General (zrdj) (Entered: 04/03/2017)
05/01/2017	<u>6</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on United States Attorney General. Date of Service Upon United States Attorney General 4/27/2017., RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. EXECUTIVE OFFICE FOR UNITED STATES ATTORNEY served on 4/27/2017 (zrdj) (Entered: 05/02/2017)
05/16/2017	<u>7</u>	NOTICE of Appearance by Johnny Hillary Walker, III on behalf of EXECUTIVE OFFICE FOR UNITED STATES ATTORNEY (Attachments: # <u>1</u> Certificate of Service)(Walker, Johnny) (Entered: 05/16/2017)

05/17/2017	<u>8</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the United States Attorney. Date of Service Upon United States Attorney on 5/16/2017. Answer due for ALL FEDERAL DEFENDANTS by 6/15/2017. (zrdj) (Entered: 05/18/2017)
05/26/2017	<u>9</u>	MOTION for CM/ECF Password by PETER M. BERNEGGER (td) (Entered: 05/31/2017)
05/26/2017	<u>10</u>	MOTION to Amend/Correct <u>1</u> Complaint by PETER M. BERNEGGER (Attachments: # <u>1</u> Exhibit Amended Complaint)(td) (Entered: 05/31/2017)
05/31/2017		MINUTE ORDER: Plaintiff's Motion for Leave to Amend His Complaint <u>10</u> is hereby GRANTED and his amended complaint, Dkt. <u>10</u> -1, is deemed FILED. Defendant is hereby ORDERED to answer or otherwise respond to Plaintiff's amended complaint on or before June 30, 2017. Signed by Judge Randolph D. Moss on 5/31/2017. (lcrdm1,) Modified on 5/31/2017 to correct typo (kt). (Entered: 05/31/2017)
05/31/2017		MINUTE ORDER: Upon consideration of Plaintiff's Motion to E-File <u>9</u> , the motion is hereby DENIED without prejudice. Under D.D.C. Local Rule 5.4(b)(2), a pro se party seeking leave of Court to obtain a CM/ECF user name and password must file a motion "describing the party's access to the internet" and "confirming the capacity to file documents and receive filings electronically on a regular basis." (The local rule also notes that the motion must "certify[] that [the pro se party]... has successfully completed the entire Clerk's Office on-line tutorial;" access to the CM/ECF tutorial will be provided should Plaintiff renew his motion to e-file in conformance with the requirements set out above. An actual CM/ECF password will not be provided until the tutorial has been successfully completed.). Because Plaintiff's motion does not currently include the information required by the local rules, the Court denies his motion but will permit him to refile his motion in accordance with the requirements described above. Signed by Judge Randolph D. Moss on 5/31/2017. (lcrdm1,) (Entered: 05/31/2017)
05/31/2017		Set/Reset Deadlines: Defendant's answer to Plaintiff's amended complaint due on or before 6/30/2017. (kt) (Entered: 05/31/2017)
05/31/2017	<u>11</u>	AMENDED COMPLAINT against EXECUTIVE OFFICE FOR UNITED STATES ATTORNEY filed by PETER M. BERNEGGER.(jf) (Entered: 05/31/2017)
06/29/2017	<u>12</u>	ANSWER to <u>11</u> Amended Complaint by EXECUTIVE OFFICE FOR UNITED STATES ATTORNEY. Related document: <u>11</u> Amended Complaint filed by PETER M. BERNEGGER. (Attachments: # <u>1</u> Certificate of Service)(Walker, Johnny) (Entered: 06/29/2017)
07/05/2017		MINUTE ORDER: The parties are hereby ORDERED to comply with the following briefing schedule: Defendant's motion for summary judgment shall be filed on or before August 4, 2017; Plaintiff's opposition to Defendant's motion for summary judgment and Plaintiff's cross-motion for summary judgment shall be filed on or before September 5, 2017; Defendant's reply in support of its motion for summary judgment and opposition to Plaintiff's cross-motion for summary judgment shall be filed on or before October 5, 2017; Plaintiff's reply in support of his cross-motion for summary judgment shall be filed on or before November 6, 2017. Signed by Judge Randolph D. Moss on 7/5/2017. (lcrdm1,) (Entered: 07/05/2017)
07/05/2017		Set/Reset Deadlines: Defendant's motion for summary judgment due on or before 8/4/2017; Plaintiff's opposition to Defendant's motion for summary judgment and Plaintiff's cross-motion for summary judgment due on or before 9/5/2017; Defendant's reply in support of its motion for summary judgment and opposition to Plaintiff's cross-motion for summary judgment due on or before 10/5/2017; Plaintiff's reply in support of his cross-motion for summary judgment due on or before 11/6/2017. (kt) (Entered: 07/05/2017)
07/10/2017	<u>13</u>	MOTION for Pre-Trial Conference by PETER M. BERNEGGER (jf) Modified on 7/13/2017 (znmw). (Entered: 07/12/2017)
07/10/2017	<u>14</u>	RESPONSE re <u>12</u> Answer to Amended Complaint filed by PETER M. BERNEGGER. (jf) (Entered: 07/12/2017)

07/12/2017		MINUTE ORDER: The parties are hereby ORDERED to appear for a status conference on July 18, 2017, at 10:00 a.m. in Courtroom 21. Should any party wish to appear telephonically, that party shall contact the Courtroom Deputy Clerk at (202) 354-3084 to make the necessary arrangements. Signed by Judge Randolph D. Moss on 7/12/2017. (lcrdm1,) (Entered: 07/12/2017)
07/12/2017		Set/Reset Hearings: A Status Conference is set for 7/18/2017, at 10:00 AM, in Courtroom 21, before Judge Randolph D. Moss. (kt) (Entered: 07/12/2017)
07/13/2017	<u>15</u>	MOTION to Stay Court Order dated July 05, 2017 by PETER M. BERNEGGER (jf) (Entered: 07/14/2017)
07/18/2017		Minute Entry for proceedings held before Judge Randolph D. Moss: Status Conference held on 7/18/2017. Plaintiff's <u>13</u> Motion for Pre-Trial Conference and <u>15</u> Motion to Stay Court Order dated July 5, 2017 are DENIED; for the reasons stated on the record. The briefing schedule on summary judgment is HELD IN ABEYANCE. The parties shall meet and confer, then file a joint status report no later than 8/25/2017. A further Status Conference is set for 8/29/2017, at 10:00 AM, in Courtroom 21, before Judge Randolph D. Moss. (Court Reporter: Elizabeth Saint-Loth.) (kt) (Entered: 07/18/2017)
08/25/2017	<u>16</u>	Joint STATUS REPORT by EXECUTIVE OFFICE FOR UNITED STATES ATTORNEY. (Attachments: # <u>1</u> Certificate of Service)(Walker, Johnny) (Entered: 08/25/2017)
08/25/2017	<u>17</u>	ERRATA and Notice of Filing Exhibits by EXECUTIVE OFFICE FOR UNITED STATES ATTORNEY <u>16</u> Status Report filed by EXECUTIVE OFFICE FOR UNITED STATES ATTORNEY. (Attachments: # <u>1</u> Exhibit 1: FOIA Request (Aug. 13, 2016), # <u>2</u> Exhibit 2: Letter from EOUSA to Bernegger (Aug. 23, 2017), # <u>3</u> Certificate of Service)(Walker, Johnny) (Entered: 08/25/2017)
08/29/2017		Minute Entry for proceedings held before Judge Randolph D. Moss: Status Conference held on 8/29/2017. The Plaintiff is directed to email the Defendant a copy of the FOIA request he contends is at issue in the lawsuit as to this case; Parties are to then confer. A further Status Conference is set for 9/13/2017, at 10:00 AM, in Courtroom 21, before Judge Randolph D. Moss. (Court Reporter: Jeff Hook.) (kt) (Entered: 08/29/2017)
09/11/2017	<u>18</u>	NOTICE to Court by PETER M. BERNEGGER (td) (Entered: 09/13/2017)
09/13/2017		Minute Entry for proceedings held before Judge Randolph D. Moss: Status Conference held on 9/13/2017. Defendant's motion for summary judgment is due by 10/30/2017; Plaintiff's opposition and cross motion for summary judgment are due by 11/29/2017; Defendant's opposition to the cross motion for summary judgment and reply are due by 12/20/2017; Plaintiff's final reply due by 1/10/2018. (Court Reporter: Jeff Hook.) (kt) (Entered: 09/13/2017)
10/24/2017	<u>19</u>	Consent MOTION for Extension of Time to <i>Move for Summary Judgment</i> by EXECUTIVE OFFICE FOR UNITED STATES ATTORNEY (Attachments: # <u>1</u> Text of Proposed Order, # <u>2</u> Certificate of Service)(Walker, Johnny) (Entered: 10/24/2017)
10/30/2017		MINUTE ORDER: Upon consideration of Defendant's Consent Motion for an Extension of Time to Move for Summary Judgment <u>19</u> , it is hereby ORDERED that the motion is GRANTED. It is further ORDERED that (1) Defendant shall file its motion for summary judgment on or before November 13, 2017; (2) Plaintiff shall file his opposition and cross-motion for summary judgment on or before December 13, 2017; (3) Defendant shall file its opposition and reply on or before January 3, 2018; (4) Plaintiff shall file his reply on or before January 24, 2018. Signed by Judge Randolph D. Moss on 10/30/2017. (lcrdm1,) (Entered: 10/30/2017)
10/30/2017		Set/Reset Deadlines: Defendant shall file its motion for summary judgment on or before 11/13/2017; Plaintiff shall file his opposition and cross-motion for summary judgment on or before 12/13/2017; Defendant shall file its opposition and reply on or before 1/3/2018. (kt) (Entered: 10/30/2017)
11/07/2017	<u>20</u>	MOTION for Extension of Time to <i>Move for Summary Judgment</i> by EXECUTIVE OFFICE FOR UNITED STATES ATTORNEY (Attachments: # <u>1</u> Text of Proposed Order, # <u>2</u> Certificate of Service)(Walker, Johnny) (Entered: 11/07/2017)

11/09/2017	<u>21</u>	RESPONSE re <u>20</u> MOTION for Extension of Time to <i>Move for Summary Judgment</i> filed by PETER M. BERNEGGER. (td) (Entered: 11/14/2017)
11/14/2017		MINUTE ORDER: Upon consideration of Defendant's Motion for Extension of Time to Move for Summary Judgment <u>20</u> , it is hereby ORDERED that the motion is GRANTED. It is further ORDERED that (1) Defendant shall file its motion for summary judgment on or before December 13, 2017; (2) Plaintiff shall file his opposition and cross-motion for summary judgment on or before January 12, 2018; (3) Defendant shall file its opposition and reply on or before February 2, 2018; (4) Plaintiff shall file his reply on or before February 23, 2018. Signed by Judge Randolph D. Moss on 11/14/2017. (lcrdm1,) (Entered: 11/14/2017)
11/14/2017		Set/Reset Deadlines: Defendant shall file its motion for summary judgment on or before 12/13/2017; Plaintiff shall file his opposition and cross-motion for summary judgment on or before 1/12/2018; Defendant shall file its opposition and reply on or before 2/2/2018; Plaintiff shall file his reply on or before 2/23/2018. (kt) (Entered: 11/14/2017)
12/13/2017	<u>22</u>	MOTION for Summary Judgment by EXECUTIVE OFFICE FOR UNITED STATES ATTORNEY (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Statement of Facts, # <u>3</u> Declaration or Princina Stone, # <u>4</u> Declaration of Brenda Gill, # <u>5</u> Declaration of David Hardy, # <u>6</u> Text of Proposed Order, # <u>7</u> Certificate of Service)(Walker, Johnny) (Entered: 12/13/2017)
12/15/2017	<u>23</u>	ORDER: Plaintiff is hereby ORDERED to respond to Defendant's motion for summary judgment <u>22</u> on or before January 12, 2018. Signed by Judge Randolph D. Moss on 12/15/2017. (lcrdm1,) Modified on 12/18/2017 to correct date (kt). (Main Document 23 replaced on 12/18/2017) (zkt). (Entered: 12/15/2017)
12/18/2017		Set/Reset Deadlines: Response to Motion for Summary Judgment due by 1/22/2018. (kt) (Entered: 12/18/2017)
12/21/2017	<u>24</u>	NOTICE OF FILING REDACTED DOCUMENT to <u>22</u> MOTION for Summary Judgment by EXECUTIVE OFFICE FOR UNITED STATES ATTORNEY (The original PDF Document contained privacy information and was restricted pursuant to the E-Government Act.) (Attachments: # <u>1</u> Declaration of Princina Stone, # <u>2</u> Declaration of Brenda Gill, # <u>3</u> Certificate of Service)(Walker, Johnny) (Entered: 12/21/2017)
12/26/2017	<u>25</u>	MOTION for Extension of Time to File Response/Reply as to <u>22</u> MOTION for Summary Judgment by PETER M. BERNEGGER (td) (Entered: 12/28/2017)
12/28/2017	<u>26</u>	RESPONSE re <u>25</u> MOTION for Extension of Time to File Response/Reply as to <u>22</u> MOTION for Summary Judgment filed by EXECUTIVE OFFICE FOR UNITED STATES ATTORNEY. (Attachments: # <u>1</u> Certificate of Service)(Walker, Johnny) (Entered: 12/28/2017)
12/29/2017		MINUTE ORDER: Upon consideration of Plaintiff's Motion for Extension of Time <u>25</u> , it is hereby ORDERED that the motion is GRANTED. Plaintiff shall file his response to Defendant's motion for summary judgment on or before January 26, 2018. Signed by Judge Randolph D. Moss on 12/29/2017. (lcrdm1,) (Entered: 12/29/2017)
12/29/2017		Set/Reset Deadlines: Plaintiff shall file his response to Defendant's motion for summary judgment on or before 1/26/2018. (kt) (Entered: 12/29/2017)
01/26/2018	<u>28</u>	MOTION for Leave to File Excess Pages by PETER M. BERNEGGER (Attachments: # <u>1</u> Exhibit Opposition)(td) (Entered: 01/30/2018)
01/26/2018	<u>29</u>	Cross MOTION for Partial Summary Judgment by PETER M. BERNEGGER (td) (Entered: 01/30/2018)
01/30/2018	<u>27</u>	Consent MOTION to Modify <i>the Briefing Schedule</i> by EXECUTIVE OFFICE FOR UNITED STATES ATTORNEY (Attachments: # <u>1</u> Text of Proposed Order, # <u>2</u> Certificate of Service)(Walker, Johnny) (Entered: 01/30/2018)
01/30/2018		MINUTE ORDER: Upon consideration of Defendant's Consent Motion for a Revised Briefing Schedule, <u>27</u> , it is hereby ORDERED that the motion is GRANTED. Defendant shall file its reply in support of its motion for summary judgment, its opposition to Plaintiff's cross-motion for summary judgment, and its opposition to

		Plaintiff's motion for discovery on or before February 16, 2018. It is further ORDERED that Plaintiff shall file his reply in support of his cross-motion for summary judgment and his reply in support of his motion for discovery on or before March 9, 2018. Signed by Judge Randolph D. Moss on 1/30/2018. (lcrdm1,) (Entered: 01/30/2018)
01/30/2018		MINUTE ORDER: Upon consideration of Plaintiff's Motion for Leave of Court to Expand Memorandum <u>28</u> , it is hereby ORDERED that the motion is GRANTED and the Opposition, Dkt. 28-1, is deemed FILED. Signed by Judge Randolph D. Moss on 1/30/2018. (lcrdm1,) (Entered: 01/30/2018)
01/30/2018	<u>31</u>	Memorandum in opposition to re <u>22</u> MOTION for Summary Judgment filed by PETER M. BERNEGGER. (td) (Entered: 02/06/2018)
01/31/2018		Set/Reset Deadlines: Defendant shall file its reply in support of its motion for summary judgment, its opposition to Plaintiff's cross-motion for summary judgment, and its opposition to Plaintiff's motion for discovery on or before 2/16/2018; Plaintiff shall file his reply in support of his cross-motion for summary judgment and his reply in support of his motion for discovery on or before 3/9/2018. (kt) (Entered: 01/31/2018)
02/01/2018	<u>30</u>	MOTION for Discovery by PETER M. BERNEGGER; "LET IT BE FILED" by Judge Randolph D. Moss (td) (Entered: 02/05/2018)
02/16/2018	<u>32</u>	Memorandum in opposition to re <u>29</u> MOTION for Partial Summary Judgment, <u>30</u> MOTION for Discovery filed by EXECUTIVE OFFICE FOR UNITED STATES ATTORNEY. (Attachments: # <u>1</u> Response to Plaintiff's Statement of Material Facts as to Which There Is No Genuine Issue, # <u>2</u> Supplemental Declaration of Brenda Gill)(Walker, Johnny) (Entered: 02/16/2018)
02/16/2018	<u>33</u>	REPLY to opposition to motion re <u>22</u> MOTION for Summary Judgment filed by EXECUTIVE OFFICE FOR UNITED STATES ATTORNEY. (Attachments: # <u>1</u> Supplemental Declaration of Brenda Gill, # <u>2</u> Certificate of Service)(Walker, Johnny) (Entered: 02/16/2018)
03/08/2018	<u>34</u>	REPLY to opposition to motion re <u>29</u> MOTION for Partial Summary Judgment, <u>30</u> MOTION for Discovery filed by PETER M. BERNEGGER. (td) (Entered: 03/09/2018)
09/20/2018	<u>35</u>	MEMORANDUM OPINION AND ORDER: Defendant's motion for summary judgment <u>22</u> , is GRANTED in part and DENIED in part; Plaintiff's cross-motion for partial summary judgment <u>29</u> , is DENIED without prejudice; and Plaintiff's motion for discovery <u>30</u> , is DENIED. See document for details. Signed by Judge Randolph D. Moss on 9/20/2018. (lcrdm1,) (Entered: 09/20/2018)
09/28/2018	<u>36</u>	NOTICE of In Camera Submission by EXECUTIVE OFFICE FOR UNITED STATES ATTORNEY re <u>35</u> Memorandum & Opinion, (Attachments: # <u>1</u> Certificate of Service)(Walker, Johnny) (Entered: 09/28/2018)
09/28/2018		MINUTE ORDER: The Court has reviewed the Defendant's in camera, ex parte submission of Plaintiff's Exhibit 10d <u>36</u> . Having reviewed the unredacted record, the Court finds that the redacted portions of the email chain involved purely internal communications within the United States Attorney's Office and that the redactions were lawful pursuant to FOIA Exemption 5. The Court accordingly grants summary judgment in favor of Defendant with respect to its application of Exemption 5 to the records at issue in this proceeding. Signed by Judge Randolph D. Moss on 9/28/2018. (lcrdm1,) (Entered: 09/28/2018)
10/02/2018		ENTERED IN ERROR.....MINUTE ORDER: Upon consideration of the Plaintiff's Motion for Service <u>3</u> , it is hereby ORDERED that the motion is DENIED as moot. The U.S. Marshal has served process on Defendants, see Dkt. <u>7</u> , <u>8</u> , <u>10</u> , and Defendants have appeared before this Court, see Dkt. <u>9</u> . Signed by Judge Randolph D. Moss on 10/02/2018. (lcrdm1,) Modified on 10/5/2018 – entered in wrong case (kt). (Entered: 10/02/2018)
10/19/2018	<u>37</u>	Second MOTION for Summary Judgment by EXECUTIVE OFFICE FOR UNITED STATES ATTORNEY (Attachments: # <u>1</u> Exhibit 1: Collection of Emails, # <u>2</u> Supplemental Declaration of Princina Stone (with exhibit), # <u>3</u> Text of Proposed

		Order, # <u>4</u> Certificate of Service)(Walker, Johnny) (Entered: 10/19/2018)
10/19/2018	<u>38</u>	NOTICE of Intent to Appeal by PETER M. BERNEGGER (ztd) (Entered: 10/25/2018)
10/25/2018	<u>39</u>	FOX/NEAL ORDER: Plaintiff is hereby ORDERED to respond to Defendant's Second Motion for Summary Judgment, Dkt. <u>37</u> , on or before November 29, 2018. See document for details. Signed by Judge Randolph D. Moss on 10/25/2018.(lcrdm1,) (Entered: 10/25/2018)
10/26/2018		Set/Reset Deadlines: Plaintiff's Response to Defendant's Second Motion for Summary Judgment due by 11/29/2018. (kt) (Entered: 10/26/2018)
11/05/2018	<u>40</u>	RESPONSE re <u>37</u> Second MOTION for Summary Judgment filed by PETER M. BERNEGGER. (ztd) (Entered: 11/08/2018)
11/09/2018	<u>41</u>	REPLY to opposition to motion re <u>37</u> Second MOTION for Summary Judgment filed by EXECUTIVE OFFICE FOR UNITED STATES ATTORNEY. (Attachments: # <u>1</u> Certificate of Service)(Walker, Johnny) (Entered: 11/09/2018)
12/20/2018	<u>42</u>	MOTION to Strike (Rule 46 Objection) <u>35</u> Memorandum & Opinion, by PETER M. BERNEGGER. (Attachment: # <u>1</u> Exhibit (3)) (tth) (Entered: 12/21/2018)